

No. 10149

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In the United States
Circuit Court of Appeals
For the Ninth Circuit

STANLEY LABORATORIES, INC., and
EDWARD A. BACHMAN, an individual
trading as STANLEY LABORATORIES and
as STILLMAN PRODUCTS COMPANY,

Petitioners.

vs.

FEDERAL TRADE COMMISSION,

Respondent.

Reply Brief of Petitioner

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The respondent in its brief, pages 12 and 13, state:

“... It applies also to the Commission’s findings as to the meaning of advertisements, for the meaning of advertisements to the public is itself a question of fact, and the Commission’s judgment as to their meaning and their false and deceptive character is conclusive unless palpably wrong.”

We contend that the Commission’s judgment in this case as to the meaning of, and alleged false and deceptive character of the letters M.D. is palpably wrong, unfair

and unjust. The same Commission in a proceeding entitled "*Docket 4657 In the Matter of Pacific Coast Paper Mills of Washington, Inc.*," dismissed a complaint charging deception in the use of the letters M.D. on a toilet tissue. In that proceeding the above named manufacturer widely distributes a toilet tissue under the trade name of M.D. The Commission issued a complaint, as above stated, contending that said Pacific Coast Paper Mills of Washington, Inc., was guilty of using unfair methods of competition and unfair or deceptive acts or practices by the use of the label M.D. After a hearing and the submission of briefs, the complaint was dismissed by the said Commission and the manufacturer is by the aforesaid action permitted to use said letters M.D. on its product. In the case at bar it is in evidence that petitioner herein applied to the United States Patent Office for the registration of the letters M.D. as a trade mark, (Respondent's exhibit No. 2, page 172 transcript) and it was duly registered April 4th, 1939, and petitioner has since enjoyed the use of it and made contracts with dealers under it and it has become known to the public by that label, trade name and mark. (And also for example, Exhibit No. 1, page 169 transcript.)

Certainly, if it is not deemed deceptive and false, as the Commission so held by dismissing the proceedings against the Pacific Coast Paper Mills of Washington, Inc., Docket 4657, it is palpably wrong, unfair and unjust to enjoin petitioner from the use of similar letters M.D. on its product. The issue is the same, but the conclusion of the Commission in the case at bar is different. The maxim *Stare decisis et non quieta movere* should apply. We are constrained to ask why it is not considered by the Commission to be false and deceptive to use the letters M.D. on the toilet tissue product, but is so considered on petitioner's product?

The reason this matter is submitted in a reply brief is due to the fact that the Commission dismissed the aforesaid proceedings of the Pacific Coast Paper Mills of Washington, Inc., subsequent to the filing of our petition for review and it was only recently called to our attention.

We therefore respectfully submit, that the cease to desist order of the Commission should be set aside to the extent that petitioner may continue to use the letters M.D. and the cross and nurse, in the sale of its product for all manufacturers should be entitled to the equal pro-

tection of the law as provided by Amendment XIV of the United States Constitution, and to equal privileges at its hands.

Respectfully submitted,

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